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OCT 14 2010

OFFICE OF PETITIONS

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P.O. Box 218
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In re Application of Beaman et al. :
Application No. 09/972,622 : Decision on Petition
Filing Date: October 9, 2001 :
Attorney Docket No. YOR919950023US4 :

This is a decision on the "Petition to Withdraw Notice of Appeal Dated 04-09-2004" filed April 15, 2004, which is being treated as a petition under 37 C.F.R. § 1.181 to withdraw the holding of abandonment of the above-identified application. The Office regrets the delay in the issuance of the instant decision.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.181."

The Office mailed a final Office action on September 10, 2003. The Office action set a shortened statutory period for reply of three (3) months.

A reply to the final Office action was filed March 17, 2004. However, the reply was untimely because it was filed beyond the maximum extendable period for reply.

The Office mailed a Notice of Abandonment on April 9, 2004. In the Notice of Abandonment, the examiner indicated the March 17, 2004 amendment would not have been entered even if the amendment had been timely filed.

The instant petition was filed April 15, 2004.

Petitioner states a reply to the final Office action was timely facsimile transmitted on March 10, 2003. Petitioner states the reply consisted of a Notice of Appeal. Petitioner has submitted a copy of the previously transmitted Notice of Appeal, which bears a certificate of transmission dated March 10, 2010, and includes authorization to charge any necessary fees to Deposit

Account No. 09-0468. Petitioner has supplied a copy of a sending unit's report verifying a document consisting of a single page was transmitted to the Office on March 10, 2010.

37 C.F.R. § 1.8(b) states,

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition satisfies the requirements set forth in 37 C.F.R. § 1.8(b). Therefore, the application did not go abandoned as a result of a failure by Applicants to timely file a reply to the final Office action. Since the Notice of Appeal was sent six months after the mailing date of the Office action, the Office has charged \$950 to Deposit Account No. 09-0468 for a three-month extension of time.

Although the application did not become abandoned as a result of a failure by Applicants to file a reply to the final Office action, the application is abandoned.

The certificate of transmission date on the Notice of Appeal has been used when determining whether or not the Notice of Appeal is timely. However, the filing date of the Notice of Appeal is April 15, 2004, the date the notice was actually received by the Office. Pursuant to 37 C.F.R. § 41.37(a), an appeal brief and the fee required under 37 C.F.R. § 41.20(b)(2) were due within two months of the filing date of the Notice of Appeal absent payment for an extension of time. Neither a brief nor a request for an extension of time was filed. As a result, the appeal was dismissed pursuant to 37 C.F.R. § 41.37(b). Since no claim was allowed, the application became abandoned on June 16, 2004. *See* MPEP 1215.04.

In view of the prior discussion, the Office will take steps to have Office records changed to indicate the date of abandonment for the application is June 16, 2004, not March 11, 2004.

The Office recognizes a decision was not mailed in response to the petition to withdraw the holding of abandonment prior to the due date for the appeal brief. However, as stated in

37 C.F.R. § 1.181(f), "The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings."

A review of Office financial records indicates the Office charged \$1,480 for a four-month extension of time to Deposit Account No. 09-0468 on April 5, 2004, as a result of the filing of the March 17, 2004 amendment. The \$1,480 fee should not have been charged to the deposit account. Therefore, the Office has credited the \$1,480 back to the deposit account.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 C.F.R. § 1.137(b). A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply (which may be a RCE instead of a brief), the required petition fee (\$1,620 for a large entity), and a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

A copy of a PDF "fillable" petition under 37 C.F.R. § 1.137(b) form can be found at: http://www.uspto.gov/web/forms/sb0064_fill.pdf.

Further correspondence with respect to this matter may be submitted as follows:

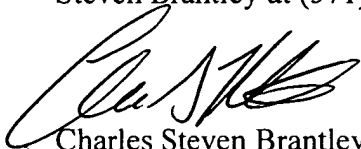
By Internet: A request for reconsideration may be filed electronically using EFS Web.¹
Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
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Office of Petitions

¹ General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.